

STATE OF MICHIGAN  
COURT OF APPEALS

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THOMAS J. PASSARO and HOWARD H.  
KAHNE,

UNPUBLISHED  
September 6, 2007

Plaintiffs-Appellees,

v

TAGLIA, FETTE, DUMKE & WHITE, P.C.,

No. 266425  
Berrien Circuit Court  
LC No. 2003-003281-CZ

Defendant-Appellant.

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Before: Kelly, P.J. and Markey and Smolenski, JJ.

PER CURIAM.

After this Court denied defendant's delayed application for leave to appeal,<sup>1</sup> our Supreme Court, in lieu of granting leave to appeal, remanded the case to this Court for consideration as on leave granted. *Passaro v Taglia, Fette, Dumke & White, PC*, 474 Mich 917; 705 NW2d 685 (2005). Defendant appeals the trial court's order vacating an arbitration award favorable to defendant and ordering a new arbitration hearing. We reverse.

Plaintiffs were partners in Taglia, Fette, Dumke, Passaro and Kahne, P.C., a law firm with six equal shareholders. Plaintiffs left the law firm to establish their own firm and the former firm was reformed as defendant. Differences arose between the parties concerning the division and valuation of assets, and the parties agreed to submit their disputes to arbitration. The arbitrator valued the firm at \$722,000, but stated that the value was "academic" because any value to which plaintiffs were entitled as shareholders was received by them in the form of intangible assets, such as goodwill and their expertise. The arbitrator also found that defendant was entitled to compensation for various matters, including clean-up and copy costs, a license agreement, and lost productivity. Plaintiffs filed a complaint in circuit court seeking to vacate the arbitration award on the basis that it was partial and contained legal errors. Defendant filed a motion for summary disposition under MCR 2.116(C)(8) and (10). The trial court vacated the award finding it was illogical, without evidentiary support, and punitive demonstrating the arbitrator's partiality.

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<sup>1</sup> *Passaro v Taglia, Fette, Dumke & White, PC*, unpublished order of the Court of Appeals, entered February 23, 2005 (Docket No. 257553).

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Corley v Detroit Bd of Ed*, 470 Mich 274, 277; 681 NW2d 342 (2004). This Court also reviews de novo a trial court's decision to vacate an arbitration award. *Saveski v Tiseo Architects, Inc*, 261 Mich App 553, 554; 682 NW2d 542 (2004).

Arbitration awards are given great deference and should not be lightly set aside. *Bell v Seabury*, 243 Mich App 413, 422; 622 NW2d 347 (2000). The courts' power to modify, correct, or vacate arbitration awards is limited by court rule. *Krist v Krist*, 246 Mich App 59, 66; 631 NW2d 53 (2001). Pursuant to MCR 3.602(J)(1):

(1) On application of a party, the court shall vacate an award if:

(a) the award was procured by corruption, fraud, or other undue means;

(b) there was evident partiality by an arbitrator appointed as a neutral, corruption of an arbitrator, or misconduct prejudicing a party's rights;

(c) the arbitrator exceeded his or her powers; or

(d) the arbitrator refused to postpone the hearing on a showing of sufficient cause, refused to hear evidence material to the controversy, or otherwise conducted the hearing to prejudice substantially a party's rights.

In this case, the trial court found that there was evident partiality, but in doing so stated that the arbitrator's decision was contrary to sound accounting principles. This latter consideration relates to whether the arbitrator exceeded his powers, not partiality. *Saveski, supra* at 554. Thus, the trial court improperly fused these two bases for vacating an arbitration award, using one to justify the other; they are separate and distinct bases and must be analyzed as such.

In regard to determining whether there was evident partiality, the partiality or bias must be "certain and direct, not remote, uncertain, or speculative." *Belen v Allstate Ins Co*, 173 Mich App 641, 645; 434 NW2d 203 (1988). It also must be "readily observable." *Id.* Plaintiffs argued that the award itself evinced partiality, but they did not allege any personal misconduct or bias. The trial court found evident partiality based on the award itself, characterizing the award as "baffling" and stating that the division of assets made "no sense." But these subjective observations, without more, do not support a finding of partiality. Because readily observable partiality is not apparent from the award, the trial court erred in vacating the award for this reason.

To the extent that the trial court may have also relied on MCR 3.602(J)(1)(c) in vacating the award, we conclude that this too was error. Arbitrators exceed their power when they act "in contravention of controlling legal principles." *Saveski, supra* at 554, quoting *DAIIE v Gavin*, 416 Mich 407, 434; 331 NW2d 418 (1982). Review of such an error is extremely limited. The error must be clearly apparent on the face of the award, from the arbitrator's stated reasons for it, from the terms of the submitted contract, or from documentation that the parties' agreed set of facts constituted the record. *Gavin, supra* at 428-429.

In determining whether there was legal error, the *Gavin* Court explained:

Arbitration, by its very nature, restricts meaningful legal review in the traditional sense. As a general observation, courts will be reluctant to modify or vacate an award because of the difficulty or impossibility, without speculation, of determining what caused an arbitrator to rule as he did. The informal and sometimes unorthodox procedures of the arbitration hearings, combined with the absence of a verbatim record and formal findings of fact and conclusions of law, make it virtually impossible to discern the mental path leading to an award. Reviewing courts are usually left without a plainly recognizable basis for finding substantial legal error. It is only the kind of legal error that is evident without scrutiny of intermediate mental indicia which remains reviewable, such as that involved in these cases. In many cases the arbitrator's alleged error will be as equally attributable to alleged "unwarranted" factfinding as to asserted "error of law". In such cases the award should be upheld since the alleged error of law cannot be shown with the requisite certainty to have been the essential basis for the challenged award and the arbitrator's findings of fact are unreviewable. [*Id.* at 429.]

Here, there was no controlling contract and the parties did not agree to a set of facts that constituted the record. The arbitrator found that each plaintiff had a one-sixth ownership interest in the firm. Thus, each was entitled to \$120,333.33. By finding that plaintiffs took this value with them, the arbitrator placed a value of at least \$120,333.33 on the intangible assets of each plaintiff. It is unknown how he ascribed this value to these assets in determining that they offset the amount of plaintiffs' ownership interest.

But an arbitrator is not required to specifically state his conclusions of law, findings of fact, or the evidence supporting them. Thus, a reviewing court may not vacate an award simply because it is unable to ascertain how or why a particular calculation was made. *Saveski, supra* at 555-556. Plaintiffs assert that there was no factual basis for the valuation. Because the trial court did not have the benefit of the entire record before it,<sup>2</sup> it is impossible to determine if plaintiffs' assertion is correct. Similarly, to the extent the trial court concluded there was no evidence to support the amounts, this finding relates to the arbitrator's findings of fact, which are not reviewable. *Gavin, supra* at 429. Further, the trial court did not specify, and it is not apparent from the face of the award, what sound accounting principles the arbitrator contravened. Therefore, we find no legal error demonstrable on the face of the arbitration award or from the arbitrator's reasoning.

For these reasons, the trial court erred in vacating the arbitration award. Defendant's motion for summary disposition should have been granted and the arbitration award affirmed. We reverse the trial court's decision and reinstate the arbitration award. In light of our decision, it is unnecessary to address defendant's remaining issue on appeal.

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<sup>2</sup> The trial court stated that it made its conclusion based on the record before it, which indisputably was not the complete record.

Reversed.

/s/ Kirsten Frank Kelly  
/s/ Michael R. Smolenski